

1 The court heard from the parties on February 14, 2017, and later that same day
2 Defendants filed the fourth Motion to Compel. (ECF No. 64). The fourth Motion to
3 Compel sought to compel the depositions of two CIA officials. The court issued an
4 Order after the February 14, 2017 hearing which reserved ruling on the third Motion to
5 Compel and set a further briefing schedule. (ECF No. 70). The Government then
6 requested the court allow a consolidated response to the third and fourth Motions to
7 Compel under the schedule previously set by the court. The court granted the request.
8 (ECF No. 74).

9 On March 8, 2017, the Government filed its Memorandum in Opposition (ECF No.
10 75) to the third and fourth Motions to Compel accompanied by approximately 520 pages
11 of exhibits, including the Declaration of Michael Pompeo, Director of the Central
12 Intelligence Agency, wherein he states in part: "The purpose of this declaration is to
13 assert, in my capacity as Director of the CIA, a formal claim of the state secrets
14 privilege..." (ECF No. 75-16, ¶ 2). On March 22, 2017, Defendants filed their "Response
15 In Further Support Of Third And Fourth Motions to Compel" (ECF No. 76), and therein
16 specifically requested oral argument. Defendants filed approximately 170 pages of
17 supporting exhibits. The Government filed a Reply in Opposition (ECF No. 78). On
18 March 27, 2017, Plaintiffs filed a Brief (ECF No. 79) accompanied by approximately 75
19 pages of exhibits.

20 **IT IS HEREBY ORDERED:**

21 1. An in-court hearing is hereby set for **Friday, May 5, 2017, at 9:00 a.m.** on
22 Defendants/Petitioners' third Motion to Compel (ECF No.54) and fourth Motion to
23 Compel (No. 64).

24 2. On or before **April 14, 2017**, Defendants and the Government shall file a final
25 joint statement pursuant to Local Rule 37.1 setting forth the matters remaining in dispute.
26 The Government's Reply argues there are now only 60 documents at issue. (ECF No. 78,
27 p. 1). Additionally, review of the Unclassified Summaries of Disputed Documents (at
28 ECF No. 75-16) reveal instances in which the Government and Defendants should be

1 able to resolve their differences without court intervention. For example, in Document
2 #42, the Government states the only information redacted from the body of the cable is
3 "codenames for CIA detention facilities." Similarly, Document #104, the Government
4 states: "The entire document is un-redacted except for a single reference to a foreign
5 government on the last page." These are just two examples where it appears little
6 information was withheld, the information would be of marginal, if any, relevance to the
7 claims in this case, and the information is classified.

8 3. The Government, several times in the briefing has offered to provide the court
9 "the classified versions of the disputed documents for review *ex parte* and *in camera*."
10 (ECF No. 78, p. 3). The Government shall have available at the May 5, 2017 hearing the
11 classified versions of the disputed documents for such review. The court will make such
12 determination after further review of the written submissions and after hearing from the
13 parties. See *United States v. Reynolds*, 345 U.S. 1, 11 (1953)("In each case, the showing
14 of necessity which is made will determine how far the court should probe in satisfying
15 itself that the occasion for invoking the privilege is appropriate. Where there is a strong
16 showing of necessity, the claim of privilege should not be lightly accepted, but even the
17 most compelling necessity cannot overcome a claim of privilege if the court is ultimately
18 satisfied military secrets are at stake.") Counsel for the Government shall make
19 arrangements with local Justice Department co-counsel or agencies for appropriate
20 storage of classified documents if the court requires those documents remain available to
21 the court at the locale of this action.

22 **IT IS SO ORDERED.** The Clerk is hereby directed to enter this Order and
23 furnish copies to counsel and W. Scooter Slade, Classified Security Information Officer
24 to the Courts.

25 **DATED** this 29th day of March, 2017.

26 s/ Justin L. Ouackenbush
27 JUSTIN L. QUACKENBUSH
28 SENIOR UNITED STATES DISTRICT JUDGE